

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

RICHARD H. HICKMAN
d/b/a HICKMAN PROPERTIES
Des Moines, Iowa

Respondent

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Docket No. TSCA-07-2003-0216

CONSENT AGREEMENT AND FINAL ORDER

Introduction

Prior to the filing of complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is Richard H. Hickman d/b/a Hickman Properties, Des Moines, Iowa 50312.

Complainant's Allegations

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead/Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Specifically, Complainant alleges:

Count I

1. Richard H. Hickman d/b/a Hickman Properties, ("Respondent") is a "lessor" as defined at 40 C.F.R. § 745.103.
2. For all periods of time relevant to the violations alleged herein, Respondent was a lessor of the residential properties as Village Green Apartments, Capitol View Apartments, and Independence Apartments, located in Des Moines, Iowa ("the Properties").
3. The Properties were constructed prior to 1978.
4. The Properties are "target housing" as defined by 40 C.F.R. § 745.103.
5. In or around May 2001, Respondent entered into a rental agreement (the "Contract") with Tony Franceshine and Susan Wood (Franceshine/Wood) for the lease of Respondent's property for residential use.
6. As a result of the Contract described in paragraph 5 above, Respondent became a "lessor," and Franceshine/Wood became lessees, as those terms are defined by 40 C.F.R. § 745.103.

of a formal hearing and to bear their respective costs and attorney's fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, he is presently in compliance with all requirements of 40 C.F.R. part 745, subpart F -Disclosure of Known Lead-Based Paint and /or lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").
5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of civil penalty in the amount of Seven Thousand Seven Hundred Dollars (\$7,700) within thirty (30) days of the effective date of this Order.
6. Respondent understands that his failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently two percent (2%) per annum for the period January 1, 2003 thru December 31, 2003) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a per annum penalty (late charge) may be assessed any amount not paid within ninety (90) days of the due date.
7. Each signatory to this Consent Agreement certifies he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Seven Thousand Seven Hundred Dollars (\$7,700) which shall be paid in accordance with the provision of Paragraph 5 of the Consent Agreement above. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasurer" and remitted to:

EPA-Region 7
C/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk
U.S. Environmental Protection agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Henry F. Rompage
U.S. Environmental Protection agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and complainant shall bear their own costs and attorney's fees incurred as a result of this matter.

RESPONDENT:
RICHARD H. HICKMAN d/b/a HICKMAN PROPERTIES
DES MOINES, IOWA

Date 7-17-03

By

Title

[Signature]
owner

COMPLAINANT:
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date: 7/21/03

By

for

William A. Spratlin

Director

Air, RCRA, and Toxics Division

Date: 7-21-03

By

Henry F. Rompage

Attorney

IT IS SO ORDERED. This Final Order shall become effective immediately.

[Signature]

Robert L. Patrick

Regional Judicial Officer

Date:

July 22, 2003

IN THE MATTER OF Richard H. Hickman d/b/a Hickman Properties, Respondent
Docket No. TSCA-07-2003-0216

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Henry F. Rompage
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Richard H. Hickman
Hickman Properties
532 29th Street
Suite A
Des Moines, Iowa 50312

Dated: 7/22/03


Kathy Robinson
Regional Hearing Clerk